IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.466 OF 2006
AND
CRIMINAL APPLICATION NO.355 OF 2006

Kailash Jain ...Applicant
(In both the Applications)

Vs.

The State of Maharashtra ...Respondent
(In both the Applications)

Shri V.J.Takalkar for the Applicant in both the Applications.

Shri U.V.Nikam, A.P.P for the Respondent in both the Applications.

CORAM : A. S. OKA, J.
DATE : NOVEMBER 16, 2006.

P.C.:

1. The Appeal preferred by the Applicant has been dismissed for default on 03rd December, 2002. The reason for dismissal is that the Advocate who was at the relevant time appearing for the Applicant did not remain present.

2. In paragraph No.4 of Application No.466 of 2006, it is set out that the Applicant had to close down his establishment in Mumbai and shift to Udaipur which is his native place. It is stated that after the applicant came to know of the order of dismissal, he

has filed the present Applications. The Applications are opposed by the learned A.P.P by pointing out that there is a gross delay.

3. The Applicant had engaged services of an Advocate. The Appeal was preferred against an order by which the Application for return of muddemal property made by the Applicant has been rejected. In such Appeal, personal presence of the Applicant on the dates fixed by this court was not mandatory especially when he had engaged services of an Advocate. The Advocate could not appear and that is the reason why Appeal was dismissed for default. In this view of the matter, a case is made out for condonation of delay and for restoration of the Appeal.

4. Hence, I pass the following order:

(i) Criminal Application No.466 of 2006 is allowed in terms of prayer clause (a).

(ii) Criminal Application No.355 of 2006 is allowed in terms of prayer clause (a).

JUDGE